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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,443

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Michael J. Christie

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MAGINOT, MOORE & BECK, LLP

CHASE TOWER

111 MONUMENT CIRCLE

SUITE 3250

INDIANAPOLIS, IN 46204

EXAMINER

NEGRELLI, CHRISTINA L

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

09/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,443	<b>Applicant(s)</b> CHRISTIE ET AL.	
	<b>Examiner</b> CHRISTINA NEGRELLI	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24- 26, 31-35, and 39-42 is/are rejected.
- 7) ☒ Claim(s) 27-30, 36-38, 43 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 26, 31-35 and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Freeman et al. (US Pat. 4,738,256).

Freeman discloses a bone miller system comprising: a shell (Fig. 15, ref. 37) configured for insertion within a bone cavity (Fig. 15) and including a shaft cavity (Fig. 15); a frame shaft (Fig. 15, shaft of ref. 23) configured for sliding reception into the shaft cavity along a longitudinal axis of the shaft cavity (Fig. 15, indicated by arrow); at least one cutter defining a cutter axis (Fig. 15, ref. 26), the at least one cutter including a first drive joint member (Fig. 15, joint between ref. 26 and ref. 34); a cutter mount (Fig. 15, ref. 58) configured to support the at least one cutter such that the cutter axis intersects the longitudinal axis at a first angle (Fig. 15); a drive shaft (Fig. 15, ref. 34) defining a drive shaft axis (Fig. 15), the drive shaft including a proximal end (Fig. 15) configured to receive rotational force to rotate the drive shaft about the drive shaft axis (Fig. 15, indicated by curved arrow), and a distal end with a second drive joint member (Fig. 15, joint between refs. 34 and 26), the second drive joint member configured to operably couple with the first drive joint member to rotate the at least one cutter about the cutter axis (Fig. 15); and a shaft alignment bracket (Fig. 15, ref. 23) configured to support the

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drive shaft at a fixed angular relationship with respect to the frame shaft (Fig. 15), such that the drive shaft axis intersects the cutter axis at a second angle (Fig. 15), wherein the second angle is about equal to or greater than the first angle (Fig. 15). One of the first drive joint member and the second drive joint member comprises a pin and the other of the first drive joint member and the second drive joint member comprises a fork (Fig. 15).

Freeman discloses a bracket assembly (Fig. 15, ref. 23, 58) configured to (i) support the at least one cutter such that the cutter axis intersects the longitudinal axis at a first angle (Fig. 15), and (ii) support the drive shaft (Fig. 15, ref. 23) at a fixed angular relationship with respect to the frame shaft, wherein the drive shaft axis is about parallel to the longitudinal axis (Fig. 15). The system further comprises a slot extending along the shell and sized to slidably receive a portion of the bracket assembly (Fig., 15). The at least one cutter comprises a cutting surface having an outer diameter (Fig. 15), and an end portion with a bearing surface having an outer diameter larger than the outer diameter of the cutting surface (Fig. 6, near ref. 32); and the bracket assembly comprises a bearing surface for rotatably mating with the bearing surface of the cutter (Fig. 15).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (US Patent 4,738,256) in view of DeCarlo, Jr. et al. (US Pat. 5,540,694).

Freeman et al. disclose the claimed invention except for the at least one cutter comprises a plurality of cutters, each of the plurality of cutters having a diameter different from the diameter of each of the other of the plurality of cutters.

DeCarlo, Jr. et al. disclose a bone miller system that comprises different sized cutting instruments (column 4, lines 52-67)(column 5, lines 1-20) that are useful in that they provide the surgeon with different sized cutting tools for different patients and surgical applications (column 4, lines 52-67)(column 5, lines 1-20).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the system of Freeman et al. with different sized cutting instruments as taught by DeCarlo, Jr. et al. in order to provide the surgeon with different sized cutting tools for different patients and surgical applications (column 4, lines 52-67)(column 5, lines 1-20).

### ***Allowable Subject Matter***

Claims 27-30, 36-38, 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

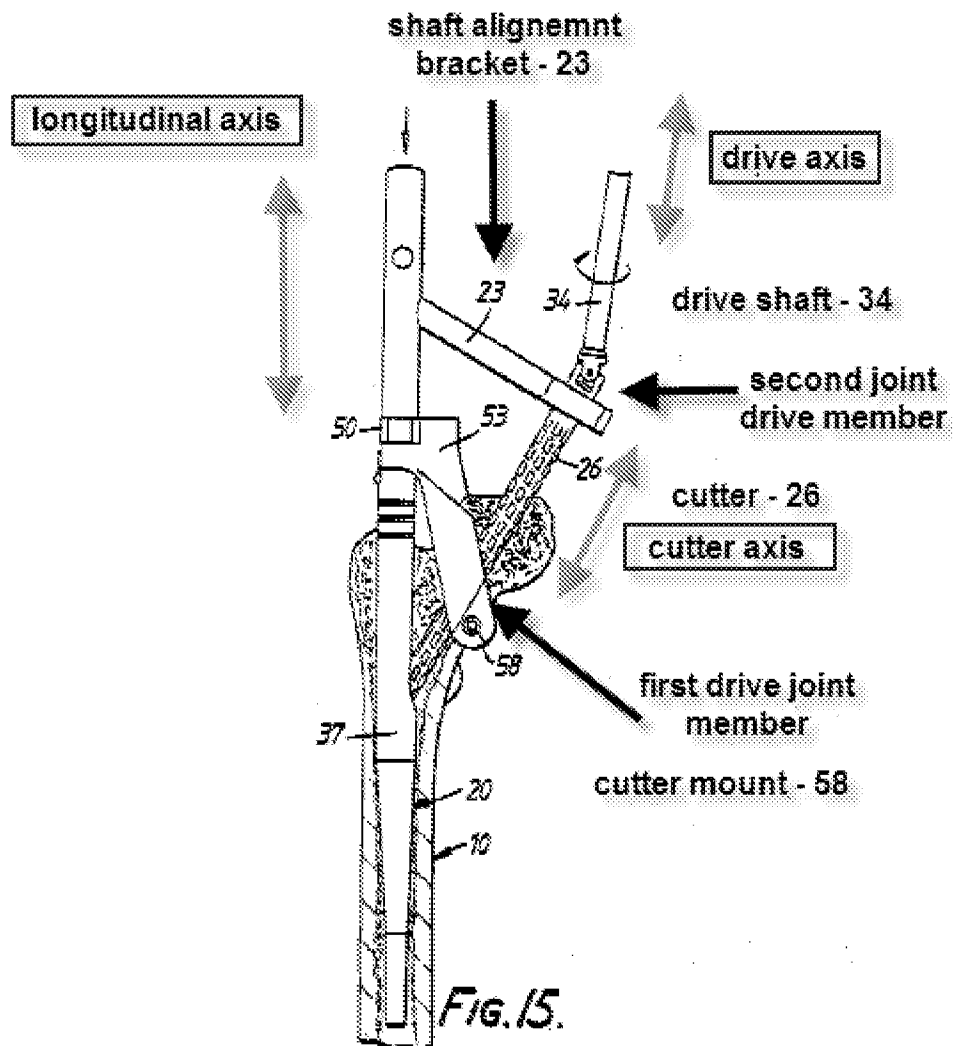
***Response to Arguments***

Applicant's arguments filed on 03/24/2009 have been fully considered but they are not persuasive.

As to claims 24, 32 and 39, the applicant asserts that Freeman fails to disclose two separate mounts which support a cutter and a drive shaft coupled to the cutter. The applicant asserts that Freeman discloses only a single mount, and fails to disclose a structure that supports the drive shaft. The examiner respectfully disagrees.

Freeman discloses two distinct mounts, a cutter mount (ref.58) and a shaft alignment bracket (ref.23) as seen in Fig.15. The cutter mount is configured to support the cutter (26). The shaft alignment bracket supports the drive shaft (34). There are two distinct mounts as can be seen in Fig.15. The drive shaft includes "a distal end with a second drive joint member," noted in Fig.15. The second drive joint member is coupled with the first drive joint member to rotate (see Fig.5) the cutter about the cutter axis (col.5, ll.7-20). For these reasons, the rejection of claims 24, 32, and 39 still stand.

Claims 25-31, 33-38, and 40-44 remain objected to as being dependent on claims 24, 32, and 39.



Claim 25 was rejected under 35 U.S.C. 103(a) as being unpatentable based primarily upon Freeman with further reference to US Pat. No. 5,540,694 to DeCarlo, Jr. et al. for limitations added by claim 25. The rejection still stands for the reasons listed above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA NEGRELLI whose telephone number is (571)270-7389. The examiner can normally be reached on Mon-Fri. 7:30-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. N./

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733